



BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 120917459-2591-01]

RIN 0648-BC57

Fisheries of the Northeastern United States; Atlantic Mackerel, Squid, and Butterfish Fisheries; Specifications and Management Measures

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Interim final rule.

SUMMARY: NMFS is implementing revised 2012 specifications for the butterfish fishery, which is managed as part of the Atlantic Mackerel, Squid, and Butterfish Fishery Management Plan. This action raises the butterfish acceptable biological catch (ABC) to 4,200 mt (from 3,622 mt), and specifies the butterfish the annual catch target (ACT) at 3,780 mt, the domestic annual harvest (DAH) and domestic annual processing (DAP) at 872 mt, and the butterfish mortality cap at 3,165 mt. These specifications promote the utilization and conservation of the butterfish resource.

DATES: Effective on [insert date of filing for public inspection with the Office of the FEDERAL REGISTER]. Comments must be received by [insert date 15 days after date of publication in the FEDERAL REGISTER].

ADDRESSES: Copies of the revised 2012 specifications document, including the Environmental Assessment (EA), is available from John K. Bullard, Northeast Regional Administrator, National Marine Fisheries Service, 55 Great Republic Drive, Gloucester, MA 01930. This document is also accessible via the Internet at <http://www.nero.noaa.gov>.

You may submit comments, identified by NOAA-NMFS-2012-0209, by any one of the following methods:

- Electronic Submission: Submit all electronic public comments via the Federal e-Rulemaking Portal [www.regulations.gov](http://www.regulations.gov). To submit comments via the e-Rulemaking Portal, first click the “submit a comment” icon, then enter NOAA-NMFS-2012-0209 in the keyword search. Locate the document you wish to comment on from the resulting list and click on the “Submit a Comment” icon on the right of that line.
- Mail to NMFS, Northeast Regional Office, 55 Great Republic Dr, Gloucester, MA 01930. Mark the outside of the envelope “Comments on Interim Final 2012 Butterfish Specifications.”
- Fax: (978) 281-9135, Attn: Aja Szumylo.

Instructions: Comments must be submitted by one of the above methods to ensure that they are received, documented, and considered by NMFS. Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered. All comments received are a part of the public record and will generally be posted for public viewing on [www.regulations.gov](http://www.regulations.gov) without change. All personal identifying information (e.g., name, address, etc.) submitted voluntarily by the sender will be publicly accessible. Do not submit confidential business information, or otherwise sensitive or protected

information. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word or Excel, WordPerfect, or Adobe PDF file formats only. Comments on this interim final rule will be addressed in the final rule for 2013 Specifications and Management Measures for the Atlantic Mackerel, Squid, and Butterfish Fishery Management Plan.

FOR FURTHER INFORMATION CONTACT: Aja Szumylo, Fishery Policy Analyst, 978-281-9195, fax 978-281-9135.

#### SUPPLEMENTARY INFORMATION:

##### Background

At the August 2012 Mid-Atlantic Fishery Management Council (Council) meeting, several longfin squid industry members expressed concern that the current 2012 acceptable biological catch (ABC) for butterfish (3,622 mt) was too conservative, and that the butterfish mortality cap on the longfin squid fishery derived from this ABC may close the longfin squid fishery prior to the end of the 2012 fishing year. In response to this concern, and in light of the Council's Scientific and Statistical Committee's (SSC) recommended butterfish ABC for the 2013 fishing year (8,400 mt), the Council requested that the SSC reconsider its butterfish ABC recommendation for 2012. The SSC met on September 13, 2012, and revised its 2012 butterfish ABC recommendation to 4,200 mt based on the information that supported their 2013 ABC recommendation, and noted that the additional mortality at the end of the 2012 fishing year should not result in overfishing. The recommendation of 4,200 mt represents the projected butterfish mortality on November 1, 2012 (2,800 mt), plus the prorated mortality that would have been allocated for the months of November and December (700 mt per month) if the SSC had

recommended a 2012 ABC of 8,400 mt ( $2,800 \text{ mt} + (700 \text{ mt} \times 2) = 4,200 \text{ mt}$ ).

A detailed summary of the SSC's rationale for its 2013 butterfish ABC recommendation is available in its May 2012 Report (available, along with other materials from the SSC discussion, at: [http://www.mafmc.org/meeting\\_materials/SSC/2012-05/SSC\\_2012\\_05.htm](http://www.mafmc.org/meeting_materials/SSC/2012-05/SSC_2012_05.htm)), and will be discussed in the documentation for the 2013 MSB specifications recommendations. It is summarized below because of its relevance to this action.

Because of the uncertainty in the most recent butterfish stock assessment, on April 6, 2012, the Council requested that NMFS Northeast Fisheries Science Center (NEFSC) offer additional analysis of the butterfish stock to aid the SSC in the ABC setting process for the 2013 fishing year. The NEFSC analysis (May 2, 2012, also available with the SSC meeting report) applied ranges of a number of different factors (such as natural mortality and survey catchability) to develop a range of likely stock biomasses that would be consistent with recent survey results and observed butterfish catch. The NEFSC also examined a range of fishing mortalities that would result from these biomass estimates. The SSC used the NEFSC analysis, along with guidance (Patterson, 1992) that suggests maintaining a natural mortality/fishing mortality ratio of 67 percent for small pelagic species, to develop a proxy overfishing limit (OFL) for butterfish. Consistent with the 2010 butterfish assessment, the SSC assumed a high level of natural mortality ( $M = 0.8$ ) and applied the 67-percent ratio to result in a fishing mortality of  $F = 0.536$ , which the SSC used as a proxy maximum fishing mortality rate threshold for butterfish. In the NEFSC analysis, a catch of 16,800 mt would only lead to fishing mortality rates higher than  $F = 0.536$  (i.e., rates consistent with overfishing based on the maximum fishing mortality rate threshold proxy) under very extreme assumptions. The SSC therefore adopted 16,800 mt as a

proxy OFL. The SSC buffered the proxy OFL by 50 percent to reach the butterfish ABC of 8,400 mt. Its justification for this buffer noted that the short life history of butterfish gives limited time for management to respond to adverse patterns, that recruitment of butterfish is highly variable and uncertain, that the stock status of butterfish is unknown, and that butterfish are susceptible to environmental and ecosystem variability, in particular inter-annual variability in natural mortality.

Based on the SSC's revised recommendation, the Council met on September 14, 2012, and recommended an increase of the butterfish ABC and annual catch limit (ACL) to 4,200 mt for the remainder of the 2012 fishing year (until December 31, 2012). The Council recommended maintaining the current 10-percent buffer for management uncertainty and set an annual catch target (ACT) of 3,780 mt (a 520-mt increase over the current ACT of 3,260 mt).

The Council also recommended re-specifying the butterfish mortality cap at 3,165 mt, and the butterfish domestic annual harvest (DAH) and domestic annual processing (DAP) at 872 mt. The current butterfish mortality cap on the longfin squid fishery is 2,445 mt, and the Council proposed using the entire 520 mt added to the ACT to increase the butterfish mortality cap, as well as transferring 200 mt from the current DAH (1,072 mt) to the cap, for a total increase of 720 mt ( $2,445 \text{ mt} + 520 \text{ mt} + 200 \text{ mt} = 3,165 \text{ mt}$ ). Butterfish landings and the butterfish cap are tracked in parallel such that all landings count against the DAH for quota monitoring, while all butterfish catch (landings and discards) by vessels that land over 2,500 lb (1.13 mt) of longfin squid count against the butterfish mortality cap. The Council requested that 200 mt of the current DAH be moved to the butterfish mortality cap to balance the use of butterfish in the mortality cap and the directed fishery, while constraining overall catch within the ABC. Current

landing trends suggest that total 2012 butterfish landing should not exceed 650 mt, thus transferring an additional 200 mt from the DAH into the butterfish cap would allow for additional longfin squid landings without constraining butterfish landings.

NMFS found that there is sufficient scientific justification for the Council's recommendations, and is implementing the revised specifications as recommended. The authority for this rulemaking is 50 CFR 648.22(e), which allows the Regional Administrator to adjust specifications during the fishing year, in consultation with the Council, by publishing notification in the Federal Register. The allocations for Research Set-Aside (RSA) and joint venture processing (JVP) remain as specified in the interim final butterfish specifications (77 FR 16472; March 21, 2012). The total allowable level of foreign fishing (TALFF) for butterfish is only specified to address bycatch by foreign fleets targeting mackerel TALFF. Because there was no mackerel TALFF specified in the final 2012 specifications for mackerel, butterfish TALFF is also set at zero.

Table 1. Interim Final Specifications, in Metric Tons (mt), for Butterfish for the 2012 Fishing Year.

Specifications	Butterfish
OFL	Unknown
ABC	4,200
ACL	4,200
ACT	3,780
RSA	15
DAH/DAP	872

JVP	0
TALFF	0
Butterfish Mortality Cap	3,165

---

## Classification

The Administrator, Northeast Region, NMFS, determined that these specifications are necessary for the conservation and management of the butterfish fishery and that they are consistent with the Magnuson-Stevens Fishery Conservation and Management Act and other applicable laws.

The Assistant Administrator for Fisheries, NOAA, finds good cause under section 553(b)(B) of the Administrative Procedure Act to waive the requirement that NMFS provide prior notice of this rule and an opportunity for comment because they are contrary to the public interest. Allowing time for prior notice and public comment would be contrary to the public interest because of the unnecessary economic harm it would cause to the longfin squid fishery. The interim final 2012 butterfish specifications will aid the longfin squid fishery because the rule will increase the butterfish mortality cap in that fishery to 3,165 mt (a 720-mt increase from status quo). Recently available data indicate that the butterfish biomass has sufficiently increased to allow NMFS to increase the butterfish mortality cap without risking harm to the species. This action did not allow for prior public comment because the request for Council reconsideration of the 2012 butterfish specifications, the SSC's scientific review process, and the determination could not have been completed any earlier, due to the inherent time constraints associated with the process. While the information supporting this change became available

during the specifications setting process for the 2013 fishing year in May 2012, the need to use this information to adjust the 2012 butterfish specifications only became apparent in August 2012, after high squid availability and rapid utilization of the lower (2,445-mt) butterfish mortality cap made the possibility of a Trimester III longfin squid closure imminent. The request to consider the applicability of the SSC's 2013 butterfish ABC recommendation to the 2012 fishing year was made on August 16, 2012. The SSC met to review this request on September 13, 2012, which was the earliest possible date that they could meet given public notice requirements necessary to schedule and convene SSC meetings. Similarly, the Council met to consider the SSC's revised recommendation and recommend the adjustment to the butterfish ABC at the earliest possible date given public notice requirements, which was September 14, 2012. Allowing time for prior public notice and comment in addition to that offered through the Council process would further delay the use of available scientific information to increase the butterfish mortality cap on the longfin squid fishery, which negates direct benefits to the longfin squid fleet.

The Assistant Administrator for Fisheries also finds good cause under section 553(d) of the Administrative Procedure Act to waive the 30-day delay in effectiveness for this action. Increasing the butterfish mortality cap should allow for the longfin squid fishery to operate for the duration of the 2012 fishing year. Longfin squid migrate throughout their range and have sporadic availability. The fleet is quick to target longfin squid aggregations when they do appear, and is capable of landing over 550 mt in a single week. Analysis of this year's fishing activity indicates that longfin squid was particularly abundant this spring and summer, and historical availability patterns suggest that longfin squid abundance could remain high until the close of the fishing year on December 31, 2012. Only 11,598 mt of the 22,220 mt longfin squid



quota has been harvested as of October 31, 2012, meaning that 52.1 percent of the quota remains to be harvested during the final 2 months of the fishing year. Closing the longfin squid fishery during the 30-day delay period prior to the implementation of this rule could prevent the harvest of a significant amount of longfin squid quota. With current squid prices at \$1 per pound, the lost revenue from such a closure (up to 1,200 mt of the remaining 10,622 mt of longfin squid quota – the average monthly squid landings for the 2012 fishing year) could amount to \$2.6 million, which would negate any benefit of implementing this rule. As noted above, allowing the longfin squid fishery to extend its fishing activity through the end of the 2012 fishing year will not result in harm to the butterfish population. Moreover, the fishing entities affected by this rule need not change their practice or gear, or make any other modifications to come into compliance with this action. These fishing vessels can continue to fish as they do now without any change after this rule goes into effect.

The Council prepared an EA for the 2012 specifications, and the NOAA Assistant Administrator for Fisheries concluded that there will be no significant impact on the human environment as a result of this rule. A copy of the EA is available upon request (see ADDRESSES).

This interim final rule has been determined to be not significant for purposes of Executive Order 12866.

This rule is exempt from the procedures of the Regulatory Flexibility Act to prepare a regulatory flexibility analysis because the rule is issued without opportunity for prior public comment.

Authority: 16 U.S.C. 1801 et seq.

Dated: November 5, 2012

---

Paul N. Doremus,  
Deputy Assistant Administrator  
for Operations,  
National Marine Fisheries Service

[FR Doc. 2012-27335 Filed 11/08/2012 at 8:45 am; Publication Date: 11/09/2012]